

DEPARTMENT OF FOOD AND AGRICULTURE

Division of Measurement Standards
6790 Florin Perkins Road, Suite 100
Sacramento, CA 95828-1812
Phone: (916) 229-3000
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A.G. KAWAMURA, Secretary



DMS Notice
QC – 08 – 7

October 9, 2008

Discard: Retain

TO WEIGHTS AND MEASURES OFFICIALS

SUBJECT: **Verbatim Corporation Settlement**

Attached is a stipulation and final judgment involving recent litigation against the Verbatim Corporation for violations of the California Fair Packaging and Labeling Act (12600 et sec California B&P). We are again very pleased with the fine work done by Santa Barbara and Marin County prosecutors representing the Department and county weights and measures programs.

The participating weights and measures jurisdictions should be sure to report these penalties in the County Monthly Report (CMR). According to the settlement Marin and Santa Barbara Counties should determine how to report the settlement information exclusive of cost reimbursements to investigators. The participating counties should also separately record their individual investigative cost reimbursements in the appropriate columns in the report. We in weights and measures are pleased with the continued support and hard work from the participating district attorneys.

Sincerely,

Edmund E. Williams

Cc QC Special Investigators
Kevin Masuhara
Robert Nichols
Allan Kaplan

1 EDWARD S. BERBERIAN, Marin County District Attorney
2 ROBERT E. NICHOLS, Deputy District Attorney
3 State Bar Number 100028
3501 Civic Center Drive, Room 130
4 San Rafael, CA 94903-4196
Telephone: (415) 499-6450
Fax Number: (415) 499-3719

5 CHRISTIE STANLEY, Santa Barbara County District Attorney
6 B. ALLAN KAPLAN, Senior Deputy District Attorney
State Bar Number 76946
7 1112 Santa Barbara Street
Santa Barbara, CA 93101
Telephone: (805) 568-2300
8 Fax Number: (805) 560-1077

9 Attorneys for Plaintiff

10 SUPERIOR COURT OF CALIFORNIA

11 COUNTY OF MARIN

12
13 PEOPLE OF THE STATE OF CALIFORNIA,)
14)
15 Plaintiff,)
16)
17 v.)
18)
19 VERBATIM CORPORATION,)
20 A California Corporation,)
21)
22 Defendant.)

NO. CV 084441

STIPULATION FOR
ENTRY OF FINAL JUDGMENT
AND INJUNCTION

19 Plaintiff, the People of the State of California,
20 appearing through its attorneys, Edward S. Berberian, District
21 Attorney for the County of Marin, by Robert E. Nichols, Deputy
22 District Attorney and Christie Stanley, District Attorney for the
23 County of Santa Barbara, by B. Allan Kaplan, Senior Deputy District
24 Attorney, and Defendant, Verbatim Corporation, appearing through
25 its attorneys, Morrison & Foerster, LLP; by Cedric C. Chao,
26 Esquire, stipulate as follows:

27 **It is hereby stipulated** that the proposed final judgment,
28 a copy of which is attached hereto as Exhibit A, and by this

FILED

SEP 10 2008

KIM TURNER
Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: S. McConnell, Deputy

1 reference made a part hereof, may be entered in the above-entitled
2 matter and that said entry of judgment may be ordered by a judge of
3 the Superior Court;

4 **It is further stipulated** that the parties have stipulated
5 and consented to the entry of the Final Judgment and Injunction,
6 attached hereunto as Exhibit A, prior to the taking of proof,
7 without trial or adjudication of any issues of law or facts herein,
8 and without this Stipulation for Entry of Final Judgment and
9 Injunction constituting evidence or admission of any facts or
10 liability or wrong-doing by Defendant;

11 **It is further stipulated** that Defendant agrees to be
12 bound as of the date of the Court's issuance of the Proposed Final
13 Judgment in the form attached as Exhibit A, and that Defendant's
14 signature on the stipulation constitutes notice to Defendant of the
15 Court's issuance of the judgment, and of the contents thereof, and
16 Defendant waives any further notice or service of this final
17 judgment;

18 **It is further stipulated** that this Stipulation for Entry
19 of Final Judgment and Injunction and the Final Judgment may be
20 presented to the Court for approval on an ex-parte basis; and,

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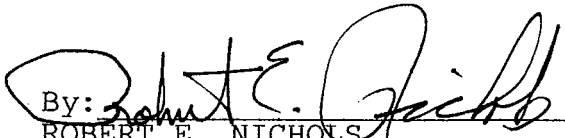
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1 **It is further stipulated** that this Consent Judgment may
2 be executed in counterparts and by facsimile, each of which shall
3 be deemed an original, and all of which, when taken together, shall
4 constitute one and the same document.


5
6 EDWARD S. BERBERIAN, Jr.
7 DISTRICT ATTORNEY
8 MARIN COUNTY

9 Dated: 9/9/08

10 By: 
11 ROBERT E. NICHOLS
12 Deputy District Attorney

13 CHRISTIE STANLEY,
14 DISTRICT ATTORNEY
15 SANTA BARBARA COUNTY

16 Dated: 9/9/08

17 By:  for
18 B. ALLAN KAPLAN
19 Senior Deputy District Attorney

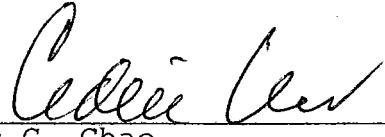
20 Verbatim Corporation
21 A California Corporation

22 Dated: August 29, 2008

23 By: 
24 Treasurer

25 Morrison & Foerster, LLP

26 Dated: September 5, 2008

27 By: 
28 Cedric C. Chao
 Attorneys for Defendant
 Verbatim Corporation
 A California Corporation

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8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF MARIN
10

11 PEOPLE OF THE STATE OF CALIFORNIA,) NO.
12)
13 Plaintiff,) FINAL JUDGMENT AND
14) INJUNCTION
15 v.) PURSUANT TO STIPULATION
16)
17 VERBATIM CORPORATION,)
18 a California corporation,)
19)
20 Defendant.)

21 Plaintiff, appearing through its attorneys, Edward S.
22 Berberian, Jr., District Attorney for the County of Marin by
23 Robert E. Nichols, Deputy District Attorney; and Christie Stanley,
24 District Attorney for the County of Santa Barbara by B. Allan
25 Kaplan, Senior Deputy District Attorney and Defendant, Verbatim
26 Corporation, appearing through its attorneys, Morrison & Foerster,
27 LLP; by Cedric C. Chao, Esquire; and

28 Plaintiff and Defendant having stipulated to the entry of this
Final Judgment and Injunction prior to the taking of any proof and
without trial or adjudication of any issue of fact or
law; and

The Court having considered the pleadings;

1 IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

2 **JURISDICTION**

3 1. This action is brought under California law, and this
4 Court has jurisdiction of the subject matter and the parties.

5 **APPLICABILITY**

6 2. This Judgment, including the injunction it contains, is
7 applicable to Defendant Verbatim Corporation and all persons,
8 partnerships, corporations, and other entities acting under, by,
9 through, on behalf of, or in concert with Defendant with actual or
10 constructive knowledge of this Judgment, including its officers,
11 directors, representatives, successors, and assignees;
12 and to any subsidiaries of Verbatim Corporation and all persons,
13 partnerships, corporations, and other entities acting under, by,
14 through, on behalf of, or in concert with any such subsidiary with
15 actual or constructive knowledge of this Judgment, including their
16 respective officers, directors, representatives, successors,
17 assignees (hereinafter collectively referred to as "Enjoined
18 Persons").

19 **INJUNCTION**

20 3. Pursuant to Business and Professions Code sections 17203,
21 Enjoined Persons, and each of them, are enjoined and restrained from
22 directly or indirectly engaging in any of the following acts or
23 practices:

24 A. Packaging, selling, distributing, and shipping
25 blank optical media products in containers not conforming to all
26 the specifications of the Fair Packaging and Labeling Act (Bus. &
27 Prof. Code §§ 12600 et seq.).

28 //

1 656038-0). The payment required under this paragraph shall be made
2 by bank check payable to the "Marin District Attorney's Trust
3 Account", for the sole and exclusive benefit of and distribution to
4 the Consumer Protection Prosecution Trust Fund.

5 6. On or before the filing of this Judgment, Defendant,
6 Verbatim Corporation, shall pay to Plaintiff as civil penalties the
7 sum of \$72,000.00 by check made payable to the Marin County
8 District Attorney and delivered to Robert E. Nichols, Marin County
9 District Attorney's Office, 3501 Civic Center Drive, Room 130, San
10 Rafael, California 94903. Pursuant to Government Code Section
11 26506 said civil penalty shall be divided equally and paid to the
12 county of each of the prosecuting agencies bringing this action.

13 7. Defendant shall bear its own attorney's fees and costs.

14 **RETENTION OF JURISDICTION**

15 8. Jurisdiction is retained for the purpose of enabling any
16 party to this Judgment to apply to the Court at any time for such
17 further orders and directions as may be necessary and appropriate
18 for the construction or carrying out of this Judgment, for the
19 modification of any of the injunctive provisions of this Judgment,
20 and for the enforcement of, compliance with, and for the punishment
21 of violations of this Judgment.

22 9. The clerk is ordered to immediately enter this Judgment.

23
24
25 DATED: _____

JUDGE OF THE SUPERIOR COURT

1 B. Any container that was shipped by Defendant prior to
2 October 4, 2006, and which is in possession of third parties, shall
3 not constitute a violation of this judgment.

4 **MONETARY RELIEF**

5 4. On or before the filing of this Judgment, Defendant
6 Verbatim Corporation shall pay to Plaintiff as and for costs the sum
7 of \$13,000.00 by bank check made payable to the Marin County
8 District Attorney and delivered to Robert E. Nichols, Marin County
9 District Attorney's Office, 3501 Civic Center Drive, Room 130, San
10 Rafael, California 94903. Said costs shall be distributed to the
11 below listed agencies as follows:

12	California Department of Measurement Standards	\$ 5,000.00
13	Marin County Agricultural Commissioner	\$ 2,882.97
14	Marin County District Attorney	\$ 225.54
15	Santa Barbara County Agricultural Commissioner	\$ 1,200.00
16	Santa Barbara County District Attorney	\$ 3,691.49
17	Total Costs	\$ 13,000.00

18 5. The parties having recognized the impossibility of
19 identifying injured consumers who suffered actual loss, and the
20 impracticality of providing direct restitution to said consumers,
21 and the disproportionate cost of making restitution to individual
22 consumers, which would far exceed the benefit consumers would gain,
23 the Court therefore orders, pursuant to Business and Professions
24 Code sections 17203 and 17535, that Defendant, Verbatim
25 Corporation, pay Ten Thousand Dollars (\$10,000.00) as *cy pres*
26 restitution on or before the filing of this Final Judgment. Said *cy*
27 *pres* restitution shall be paid to the Consumer Protection
28 Prosecution Trust Fund established in the case of *People v. ITT*
Consumer Financial Corporation (Alameda Superior Court No.
//

FILED

SEP 22 2008

KIM TURNER
Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: S. McConnell, Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF MARIN

PEOPLE OF THE STATE OF CALIFORNIA,)
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Plaintiff,)
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v.)
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VERBATIM CORPORATION,)
a California corporation,)
)
Defendant.)

NO. CV 084441
FINAL JUDGMENT AND
INJUNCTION
PURSUANT TO STIPULATION

Plaintiff, appearing through its attorneys, Edward S. Berberian, Jr., District Attorney for the County of Marin by Robert E. Nichols, Deputy District Attorney; and Christie Stanley, District Attorney for the County of Santa Barbara by B. Allan Kaplan, Senior Deputy District Attorney and Defendant, Verbatim Corporation, appearing through its attorneys, Morrison & Foerster, LLP; by Cedric C. Chao, Esquire; and

Plaintiff and Defendant having stipulated to the entry of this Final Judgment and Injunction prior to the taking of any proof and without trial or adjudication of any issue of fact or law; and

The Court having considered the pleadings;

1 IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

2 **JURISDICTION**

3 1. This action is brought under California law, and this
4 Court has jurisdiction of the subject matter and the parties.

5 **APPLICABILITY**

6 2. This Judgment, including the injunction it contains, is
7 applicable to Defendant Verbatim Corporation and all persons,
8 partnerships, corporations, and other entities acting under, by,
9 through, on behalf of, or in concert with Defendant with actual or
10 constructive knowledge of this Judgment, including its officers,
11 directors, representatives, successors, and assignees;
12 and to any subsidiaries of Verbatim Corporation and all persons,
13 partnerships, corporations, and other entities acting under, by,
14 through, on behalf of, or in concert with any such subsidiary with
15 actual or constructive knowledge of this Judgment, including their
16 respective officers, directors, representatives, successors,
17 assignees (hereinafter collectively referred to as "Enjoined
18 Persons").

19 **INJUNCTION**

20 3. Pursuant to Business and Professions Code sections 17203,
21 Enjoined Persons, and each of them, are enjoined and restrained from
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24 A. Packaging, selling, distributing, and shipping
25 blank optical media products in containers not conforming to all
26 the specifications of the Fair Packaging and Labeling Act (Bus. &
27 Prof. Code §§ 12600 et seq.).

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1 B. Any container that was shipped by Defendant prior to
2 October 4, 2006, and which is in possession of third parties, shall
3 not constitute a violation of this judgment.

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17	Total Costs	\$ 13,000.00

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Consumer Financial Corporation (Alameda Superior Court No.
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12 county of each of the prosecuting agencies bringing this action.

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16 party to this Judgment to apply to the Court at any time for such
17 further orders and directions as may be necessary and appropriate
18 for the construction or carrying out of this Judgment, for the
19 modification of any of the injunctive provisions of this Judgment,
20 and for the enforcement of, compliance with, and for the punishment
21 of violations of this Judgment.

22 9. The clerk is ordered to immediately enter this Judgment.

23
24
25 DATED: _____

SEP 22 2008

J.R. RITCHIE

JUDGE OF THE SUPERIOR COURT